

SENATE BILL NO. 314

INTRODUCED BY R. LAIBLE

A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING "NATURAL" AND "NATURAL WATER BODY" FOR PURPOSES OF THE LAW GOVERNING THE RECREATIONAL USE OF STREAMS; AMENDING SECTIONS 23-2-301 AND 23-2-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 23-2-301, MCA, is amended to read:

"23-2-301. Definitions. For purposes of this part, the following definitions apply:

(1) "Barrier" means an artificial obstruction located in or over a water body, restricting passage on or through the water, ~~which that~~ totally or effectively obstructs the recreational use of the surface water at the time of use. A barrier may include but is not limited to a bridge or fence or any other ~~manmade~~ manufactured obstacle to the natural flow of water.

(2) "Class I waters" means surface waters, other than lakes, that:

(a) lie within the officially recorded federal government survey meander lines ~~thereof~~ of the surface water;

(b) flow over lands that have been judicially determined to be owned by the state by reason of application of the federal navigability test for state streambed ownership;

(c) are or have been capable of supporting the following commercial activities, as defined by published judicial opinion as of April 19, 1985:

(i) log floating;₁

(ii) transportation of furs and skins;₁

(iii) shipping;₁

(iv) commercial guiding using multiperson watercraft;₁

(v) public transportation;₁ or

(vi) the transportation of merchandise, ~~as these activities have been defined by published judicial opinion as of April 19, 1985~~; or

(d) are or have been capable of supporting commercial activity within the meaning of the federal navigability test for state streambed ownership.

(3) "Class II waters" means all surface waters that are not class I waters, except lakes.

(4) "Commission" means the fish, wildlife, and parks commission provided for in 2-15-3402.

(5) "Department" means the department of fish, wildlife, and parks provided for in 2-15-3401.

(6) "Diverted away from a natural water body" means a diversion of surface water through a ~~manmade~~ manufactured water conveyance system, including but not limited to:

(a) an irrigation or drainage canal or ditch;

(b) an industrial, municipal, or domestic water system, excluding the lake, stream, or reservoir from which the system obtains water;

(c) a flood control channel; or

(d) a hydropower inlet and discharge facility.

(7) "Lake" means a body of water where the surface water is retained by either natural or artificial means and the natural flow of water is substantially impeded.

(8) "Natural" means arising from and in accordance with what is found in nature, not artificial or manufactured.

(9) "Natural water body" means a body of water that would flow perennially in the absence of manipulation or diversion by artificial or manufactured means. In determining perennial flow, drainage water or wastewater that has been diverted for a beneficial use must be excluded until that water has returned to class I waters.

~~(8)~~(10) "Occupied dwelling" means a building used for a human dwelling at least once a year.

~~(9)~~(11) "Ordinary high-water mark" means the line that water impresses on land by covering it for sufficient periods to cause physical characteristics that distinguish the area below the line from the area above it. Characteristics of the area below the line include, when appropriate, but are not limited to deprivation of the soil of substantially all terrestrial vegetation and destruction of its agricultural vegetative value. A flood plain adjacent to surface waters is not considered to lie within the surface waters' high-water marks.

~~(10)~~(12) "Recreational use" means with respect to surface waters:

(a) fishing;

(b) hunting;

(c) swimming;

(d) floating in small craft or other flotation devices;

(e) boating in motorized craft, unless otherwise prohibited or regulated by law, or craft propelled by oar

1 or paddle;

2 (f) other water-related pleasure activities; and

3 (g) related unavoidable or incidental uses.

4 ~~(11)~~(13) "Supervisors" means the board of supervisors of a soil conservation district, the directors of a
5 grazing district, or the board of county commissioners if a request pursuant to 23-2-311(3)(b) is not within the
6 boundaries of a conservation district or if the request is refused by the board of supervisors of a soil conservation
7 district or the directors of a grazing district.

8 ~~(12)~~(14) "Surface water" means, for the purpose of determining the public's access for recreational use,
9 a natural water body, its bed, and its banks up to the ordinary high-water mark."

10
11 **Section 2.** Section 23-2-302, MCA, is amended to read:

12 **"23-2-302. Recreational use permitted -- limitations -- exceptions.** (1) Except as provided in
13 subsections (2) through (5), all surface waters that are capable of recreational use may be so used by the public
14 without regard to the ownership of the land underlying the waters.

15 (2) The right of the public to make recreational use of surface waters does not include, without
16 permission or contractual arrangement with the landowner:

17 (a) the operation of all-terrain vehicles or other motorized vehicles not primarily designed for operation
18 upon the water;

19 (b) the recreational use of surface waters in a stock pond or other private impoundment fed by an
20 intermittently flowing natural watercourse;

21 (c) the recreational use of waters while diverted away from a natural water body for beneficial use
22 pursuant to Title 85, chapter 2, part 2 or 3, except for impoundments or diverted waters to which the owner has
23 provided public access;

24 (d) big game hunting except by long bow or shotgun when specifically authorized by the commission;

25 (e) overnight camping within sight of any occupied dwelling or within 500 yards of any occupied dwelling,
26 whichever is less;

27 (f) the placement or creation of ~~any~~ a permanent duck blind, a boat moorage, or any seasonal or other
28 objects within sight of or within 500 yards of an occupied dwelling, whichever is less; or

29 (g) use of a streambed as a right-of-way for any purpose when water is not flowing ~~therein~~ in the
30 streambed.

(3) The right of the public to make recreational use of class II waters does not include, without permission of the landowner:

- (a) big game hunting;
- (b) overnight camping;
- (c) the placement or creation of any seasonal object; or
- (d) other activities ~~which~~ that are not primarily water-related pleasure activities as ~~defined~~ described in 23-2-301(10)(12).

(4) The right of the public to make recreational use of surface waters does not grant any easement or right to the public to enter onto or cross private property in order to use ~~such~~ the waters for recreational purposes.

(5) The commission shall adopt rules pursuant to 87-1-303, in the interest of public health, public safety, or the protection of public and private property, governing recreational use of class I and class II waters. These rules must include the following:

- (a) the establishment of procedures by which any person may request an order from the commission:
 - (i) limiting, restricting, or prohibiting the type, incidence, or extent of recreational use of a surface water;or
- (ii) altering limitations, restrictions, or prohibitions on recreational use of a surface water imposed by the commission;
- (b) provisions requiring the issuance of written findings and a decision whenever a request is made pursuant to the rules adopted under subsection (5)(a); and
- (c) a procedure for the identification of streams within class II waters ~~which~~ that are not capable of recreational use or are capable of limited recreational use; and a procedure to restrict the recreational use to the actual capacity of the water.

(6) The provisions of this section do not affect any rights of the public with respect to state-owned lands that are school trust lands or any rights of lessees of ~~such~~ the lands."

NEW SECTION. Section 3. Effective date. [This act] is effective on passage and approval.

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